

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Angelica Garcia a.k.a. Angelica Medrano,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 03-09-027
(Filed September 17, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER ORDERING
PARTIES TO DISCUSS SETTLEMENT ONE MORE TIME**

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling sets forth a preliminary procedural schedule, assigns a presiding hearing officer, addresses the scope of the proceeding and the process for its resolution.

Background

This dispute concerns a bill by Southern California Edison Company (Edison) to Angelica Garcia (Garcia) in the amount of \$9,805.66. By letter on November 6, 2003, Edison reduced its bill to \$5,230, as discussed below. The reduced sum is the total of two figures: \$4,823.86 represents Edison's estimate of the value of unmetered electricity usage at the rear residence at 689 W. Teapot Dome Avenue, Porterville, California for the three-year period from November 1999 through November 2002; and \$406.23 represents the costs

of the investigation, accounting and general corporate overhead. Garcia was the customer of record for the period of time at issue.

The assigned administrative law judge (ALJ) held a prehearing conference (PHC), by telephone, on October 28, 2003. Garcia had not arranged with the Commission for a Spanish-language translator, but with the consent of Garcia, translation was provided by Ana Santana, the secretary to defendant's counsel. At the PHC, the ALJ discussed controlling precedent, which stems from the Commission's decision in *Re Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to Meter Error and Meter Fraud*, D.86-06-035, 21 CPUC 2d 270.

The ALJ explained the following principles:

- In cases brought at the Commission regarding backbilling for alleged electricity theft, the sole issue is whether the customer benefited from unmetered electricity. The Commission is not a criminal court; guilt or innocence with respect to the alleged meter tampering, or other form of unauthorized electricity diversion, is not at issue.
- The customer of record is responsible for the unmetered usage at the regular tariff rate, plus associated costs, regardless of who performed the electricity diversion.
- The utility may backbill the customer of record for the unmetered usage for a period of no more than three years.¹

The ALJ set a process for the parties to explore informal resolution of this dispute. She directed Edison to: 1) provide Garcia with a clear, written explanation of its estimate; 2) telephone Garcia at an agreed time and date to

¹ The utility may have other remedies in the courts.

discuss the estimate, in Spanish; and 3) provide a written report on the success of the parties' conversation.

Edison provided Garcia with an explanation of its billing estimate by letter dated November 6, 2003. Edison's subsequent letter to the ALJ, dated November 18, 2003 and served on Garcia, reports that the parties have been unable to resolve this matter and, moreover, that Garcia stated she did not want to discuss the matter with Edison further, but wanted the ALJ to decide this case.

Scope of the Proceeding

As applied to this case, because Garcia was the undisputed customer of record during the period when the alleged electricity theft occurred, she is responsible for the bill for the unmetered electricity. Again, it is immaterial whether Garcia — or someone else — caused the electricity diversion. Therefore, the only outstanding issue in this case is what amount Garcia must pay Edison. The bill for the unmetered electricity must be based on a reasonable estimate of the unmetered usage and may include associated costs, such as the investigation costs.

Edison's November 18, 2003 report states that Garcia disagrees with Edison's revised estimated bill and that she provided Edison with six reasons for her disagreement:

1. She did not live in the house and therefore was not responsible;
2. Previous tenants had received \$500/month bills and Edison's rebill was calculated at that rate, therefore the bill was too high;
3. The bill was too much for three years;
4. Basing the bill on the winter use was wrong — the winter use is too high;

5. Use during other times of the year was less; and
6. The house was vacant for some months. (Edison November 18, 2003 report, p. 2.)

As already discussed, since Garcia was the customer of record on the disputed account, the first reason is irrelevant. The second reason fares no better, since the “Rebiling Detail” attached to Edison’s November 6, 2003 letter to Garcia explains that Edison based its calculations — not on prior bills to the tenants — but on an average daily usage of 36.5 Kwh, which is the actual, average daily usage recorded from November 20, 2002 through January 10, 2003, the 51-day winter period immediately after Edison removed the unauthorized bypass from the meter at 689 W. Teapot Dome Avenue.

Reasons 3, 4, and 5, read together, focus on Edison’s use of an actual winter usage reading to estimate year round usage during the three years at issue. These reasons may have merit, since the Edison’s “Rebiling Detail” does not explain whether there was a measured variance between summer and winter usage during the years before the bypass occurred and, if so, what that variance was.

With respect to Reason 6, Edison’s report states that Edison asked Garcia to provide documentation about when the house was vacant but that she telephoned, subsequently, to say that she could find nothing. Without documentation, Reason 6 does not lend strong support to Garcia’s claim that the estimate is too high.

Next Steps and Schedule

Though the parties’ discussions to date have not led to settlement, it is clear that they are much closer than when the complaint was filed, since Edison has reduced the amount of its backbill by approximately one half. Considering

the cost, in time and resources, if the parties must travel to San Francisco for a short evidentiary hearing before the ALJ, I am directing them to engage in one more attempt at resolving this case informally. Therefore, the parties shall do the following:

- Within approximately two weeks of this ruling, Edison shall provide Garcia with a clear, written explanation of why 36.5 Kwh represents a fair measure of the estimated, average daily year-round usage, or, in the alternative, if upon reconsideration Edison revises its estimate to use a different measure or measures for other parts of the year, it shall explain why it has selected those alternative figures. The letter shall constitute Edison's final settlement offer and a copy shall be sent to the ALJ.
- Approximately one week thereafter, Edison shall telephone Garcia to discuss, in Spanish, its final settlement offer.
- Prior to December 31, 2003, Edison shall make a second report to the ALJ, in writing, and send a copy to Garcia.

In the interim, the ALJ will set this case for one day of evidentiary hearing to be held in January 2004. The precise date and time will be stated in a separate notice. If the parties are able to settle this case, the hearing will be cancelled. Regardless, I expect this case to be decided within the 12-month period for resolution of complaints, as required by Pub. Util. Code. § 1701.2(d).

If the hearing is held, the sole issue will be the amount Garcia owes Edison for electricity for the period November 1999 through November 2002.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication. The preliminary determination, in the Instructions to Answer, that hearings are necessary remains current; it will be revised if the parties settle this case.

Assignment of Presiding Officer

ALJ Jean Vieth will be the presiding officer, if evidentiary hearing is held.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The presiding officer will be Administrative Law Judge Vieth.
4. This ruling confirms that this proceeding is adjudication.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated November 26, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Scoping Memo and Ruling of Assigned Commissioner Ordering Parties to Discuss Settlement One More Time on all parties of record in this proceeding or their attorneys of record.

Dated November 26, 2003, at San Francisco, California.

HELEN FRIEDMAN

Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.